

No. 11624-4Lab-74/38065.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Ashoka Enterprises (P) Ltd., 14/7, Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 65 of 1973

between

SHRI JOKHAM PARSHAD, WORKMAN AND THE MANAGEMENT OF M/S ASHOKA ENTERPRISES
(P) LTD., 14/7, FARIDABAD

Present.—

Shri Roshan Lal Sharma, for the workman.

Shri S. L. Gupta, for the management.

AWARD

Shri Jokham Parshad, workman concerned was in the service of M/s Ashoka Enterprises (P) Ltd., 14/7, Faridabad as a helper in the Plastic Reels Department. His services were allegedly terminated by the management, with effect from 25th January, 1973 without any justification. He demanded reinstatement but without success. This gave rise to an industrial dispute. He gave the demand notice on 30th January, 1973 whereupon conciliation proceedings were started which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, referred the dispute for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,—vide order No. ID/FD/217/18250, dated 26th May, 1974 with the following terms of reference :—

Whether the termination of services of Shri Jokham Parshad was justified and in order ? If not, to what relief is he entitled ?

Usual notices were given to the parties and they put in their respective pleadings. The workman reiterated his claim for reinstatement and payment of back wages as earlier raised through the demand notice which forms part of the present reference with the allegation that his services had been terminated in an illegal manner without any just and reasonable grounds.

The management contested the claim of Shri Jokham Parshad mainly on the ground that as a matter of fact, the Plastic Reels Department in which he was working had to be closed down in January, 1973 due to power shortage, as a result, whereof he was rendered surplus and his services had, therefore, to be brought under retrenchment. It was further urged that the retrenchment compensation due to him under section 25 F was offered but he had refused to collect the same.

From the pleadings of the parties the only issue that arose for determination in the case was as per the term of reference stated above.

The management has examined one witness Shri Harbans Singh, Director of the company who has sworn testimony to the above fact regarding the closure of the Plastic Reels Department and the retrenchment of the workman. He has proved 5 documents including the retrenchment notice, dated 7th January, 1973, viz., Ex. M-1, another letter, dated 24th January, 1973 written to the workman Ex. M-2, report of the Conciliation Officer, dated 14th January, 1973, Ex. M-3, covering letter, dated 15th January, 1973, Ex. M-4, letter, dated 26th November, 1973 of the workman Ex. M-5.

The case has been argued on both sides and I have given a careful thought to the evidence on record oral as well as documentary.

As already pointed out, the case for the management is that the Plastic Reels Department in which the present workman was employed had to be closed down in January, 1973 due to acute power shortage. This is proved from the statement on oath of the Director of the Company M.W. 1. It has further been established that due to the closure of the said department service of the present workman had become surplus and notice of retrenchment was given to him on 7th January, 1973 which is Exhibit M-1. It was mentioned in this notice that

he would be given wages for the one month till the date of expiry of the notice on 6th February, 1973. The management gave him another notice on 24th January, 1973 Ex. M-2 that he was entitled to his dues on the expiry of the earlier notice and he could collect the same from the accounts office on any working day during the working hours of the factory. It has been argued on behalf of the workman that he did not receive any retrenchment notice from the management which fact is, however, belied by his own letter, dated 26th November, 1973 Ex. M-5 in which he has admitted in clear words that the retrenchment notice had been received by him under registered post but the contents of the same as to the closure of the department due to power shortage were not correct. The plea of the management regarding the closure of the said department does not appear to be an after thought. This very plea was taken before the Conciliation Officer also as per the report Ex.M-3.

The management had thus a reasonable ground for retrenching the services of the present workman who on account of the closure of the Plastic Reels Department where he was working had become a surplus hand. The management was not bound to keep him in service when there was no work for him. In his statement Shri Jokham Parshad has deposed that workers junior to him had been retained in service and there had been fresh recruitments also but no evidence has been led to show that the Plastic Reels Departments had been re-started or any worker was working in that department, old and new. Shri Karbans Singh, Director of the Company has candidly admitted that there have been fresh recruitments but in some other department. In answer to Court question he has stated that the fresh appointments were made in the Machine Shop and that the amount of retrenchment compensation, notice pay etc. due to the workmen were offered to him but he had refused to accept the same.

Still another argument has been advanced on behalf of the workman that notice of the retrenchment was not given to the Government as required under clause 'C' of section 25-F of the Industrial Disputes Act which was necessary. There is nothing on the record to show that any such notice of the retrenchment of the present workman was given by the management to the Government in the prescribed manner, as contemplated under the aforesaid provision of section 25-F(C). This provision regarding the giving up the notice of retrenchment to the Government in the prescribed manner is no doubt of a mandatory nature but the case law is clear on the point that non-compliance with this requirement of law alone would not invalidate the retrenchment of the workman/workmen brought about by the management. The above provision in the law has been made not for any benefit of the workman/workmen concerned but for the information of the Government. The Government may take action against the management for the violation of the said provision of law. The plea of retrenchment raised in the conciliation proceedings and the reference of the dispute by the Government on the basis of the failure report of the conciliation officer may impliedly amount to notice of retrenchment. In any case, the retrenchment brought about in the circumstances mentioned above can not be held to be invalid.

That disposes of the entire case. No other point worth mentioned has been urged on either side and on the facts established in the case. I am of the considered view that the termination of the services of the present workman by way of retrenchment on account of the closure of the particular department in which he was working due to acute power shortage, was, justified and in order. There is no cogent and convincing evidence on the record to show that this particular department had been re-started which might justify claim of the workman for reinstatement.

So, for the reason aforesaid, the issues involved is decided against the workman holding that he is not entitled to any relief by way of reinstatement or payment of back wages, dues, except wages for one month and service compensation, as contemplated under section 25-F, which was offered to him but he had refused to accept and of course, the other legal dues which he may be entitled to receive, from his employer for the period before the termination of his services like earned wages, leave wages, bonus etc. The award is made accordingly but there shall be no order as to costs.

Dated the 22nd November, 1974.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1653, dated 28th November, 1974

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Dated the 22nd November, 1974.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

MISS. M. SETH,

Commissioner and Secretary to Government,
Haryana, Labour and Employment Department.